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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

18 Cr. 834 (PAE)

5 JAMEL JONES, KIFANO JORDAN,

6 Defendants.

Curcio Hearing

7 -----x

8 New York, N.Y.
9 January 22, 2019
12:08 p.m.

10 Before:

11 HON. PAUL A. ENGELMAYER,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
Southern District of New York

17 BY: MICHAEL D. LONGYEAR

JACOB E. WARREN

Assistant United States Attorneys

19 DIANE FERRONE, ESQ., Standing in For:

20 DAWN M. CARDI, ESQ.

CARDI & EDGAR LLP

Attorneys for Defendant Jamel Jones

21 LAW OFFICES OF JEFFREY LICHTMAN

22 Attorneys for Defendant Kifano Jordan

23 BY: JEFFREY B. EINHORN, ESQ.

24 ALSO PRESENT: SCOTT E. LEEMON, ESQ.

Jlmljnc

(Case called)

MR. LONGYEAR: Good afternoon, your Honor. Michael Longyear and Jacob Warren on behalf of the United States.

THE COURT: Very good. Good afternoon to both of you. And who do I have for Jamel Jones?

MS. FERRONE: Diane Ferrone standing in for Dawn Cardi. As your Honor is aware, Ms. Cardi is CJA counsel.

THE COURT: Very good. Good afternoon, Ms. Ferrone. And Mr. Jones, good afternoon to you.

MR. LEEMON: And Scott Leemon here.

THE COURT: Yes. And Mr. Leemon, you are there as well. And you are hoping to represent Mr. Jones pending the outcome of this proceeding.

MR. LEEMON: Correct.

THE COURT: And who do I have for Mr. Jordan?

MR. EINHORN: Jeffrey Einhorn from the Law Offices of Jeffrey Lichtman. My partner is on trial, as your Honor may be aware, in the Eastern District.

THE COURT: Very well. Good afternoon to you, Mr. Einhorn. And good afternoon to you, Mr. Jordan.

DEFENDANT JORDAN: Good afternoon.

THE COURT: And good afternoon to all of the members of the public who are here. Welcome to all of you. Thank you for being here.

All right. This is a limited proceeding. It's only

Jlmljonc

1 to take up a *Curcio* issue that has been taken up by the fact
2 that Mr. Leemon, who is proposing to succeed Ms. Cardi and
3 Ms. Ferrone as counsel, briefly represented Mr. Jordan. I have
4 a series of questions that I want to put to each of the
5 defendants one by one, but before I do that, I think it makes
6 the most sense for me to take up with counsel what has happened
7 since the flurry of orders that issued about this. What I'm
8 most eager to do is get an understanding of the communications
9 that have been had with your respective clients about the
10 potential conflict and about whether to waive it or not. And
11 the reason is, as all are aware, sometimes in these *Curcio*
12 proceedings there's a two-step process in which first the
13 client is made aware of the potential conflict and then they're
14 given an opportunity to confer with conflict-free counsel about
15 what to do about it. In this case, because I was given prompt
16 notice of the issue and because it was going to be a little
17 while before we could all meet, I thought it made sense for, if
18 possible, the defendants to speak with what for each of them
19 was an independent counsel already visible on the record to get
20 that guidance.

21 So let me begin with you, Ms. Ferrone. You and
22 Ms. Cardi were appointed as CJA counsel to represent Mr. Jones
23 at the outset of this case.

24 MS. FERRONE: That's correct, your Honor. Ms. Cardi
25 was. I'm of counsel to Ms. Cardi.

Jlmljonc

1 THE COURT: But you work with Ms. Cardi on this.

2 MS. FERRONE: Yes. So I have met with Mr. Jones as
3 well.

4 THE COURT: Move the mic closer.

5 You worked with Ms. Cardi on this representation.

6 MS. FERRONE: Yes, your Honor.

7 THE COURT: Okay. And the representation here that's
8 been made to me is that Mr. Leemon, for a brief period of time,
9 represented Mr. Jordan, essentially the day the case was taken
10 down, but almost immediately stepped aside in favor of
11 Mr. Einhorn. Is that your understanding?

12 MS. FERRONE: Yes, your Honor.

13 I'm being told no, so --

14 THE COURT: Sorry. I want you to sit down,
15 Mr. Leemon. Let me just hear from the others. You're not yet
16 in the case, Mr. Leemon.

17 So let's get the facts. Mr. Einhorn, what happened?

18 MR. EINHORN: I think it's a little bit more detailed
19 than that. I think certainly Mr. Jordan was in the process of
20 retaining us, but actually CJA counsel was appointed in the
21 meantime. I believe it was Mr. Roth. So Mr. Leemon was
22 initially his attorney and then Mr. Roth?

23 Okay. So again, it was Mr. Roth at first, then
24 Mr. Leemon, then Mr. Roth again, and then he retained my firm.

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Jlmljonc

1 THE COURT: Okay. So Mr. Einhorn, do you have an
2 understanding of for how long it was that Mr. Leemon
3 represented Mr. Jordan?

4 MR. EINHORN: I think technically just a few weeks,
5 your Honor, but I believe there was only two meetings about the
6 case, if that, and one of them I believe was on the day of his
7 arrest.

8 MR. LEEMON: Yes.

9 THE COURT: All right. I think then, before we even
10 go any further, I need to speak with Mr. Leemon then right now,
11 because a few weeks is a radically different situation, which
12 may present a more substantial problem.

13 Mr. Leemon, give me chapter and verse -- I don't want
14 argument -- chapter and verse about your representation of
15 Mr. Jordan.

16 MR. LEEMON: I received a call -- they were arrested
17 right before Thanksgiving. I received a call during
18 Thanksgiving weekend -- I was down in Florida with my family --
19 asking me to come back to represent him.

20 THE COURT: "Him" is who?

21 MR. LEEMON: "Him" is Mr. Jordan.

22 THE COURT: Who did you get the call from?

23 MR. LEEMON: One of his family members.

24 THE COURT: Okay.

25 MR. LEEMON: I flew back, met with Mr. Jordan on

Jlmljonc

1 Sunday before the Monday court appearance.

2 THE COURT: Where did you meet with Mr. Jordan?

3 MR. LEEMON: At MCC.

4 THE COURT: And at this point had Mr. Jordan been
5 appointed CJA counsel?

6 MR. LEEMON: Mr. Roth had represented him at the
7 initial appearance.

8 THE COURT: As CJA.

9 MR. LEEMON: As CJA counsel.

10 THE COURT: And you were being asked to come in as
11 paid counsel.

12 MR. LEEMON: As retained counsel.

13 THE COURT: Go ahead.

14 MR. LEEMON: I met with him briefly that day, briefly
15 spoke generally about the indictment, explained to him what
16 would happen at the status conference the next day; I appeared
17 at the status conference the next day, and we had agreed on a
18 retainer agreement and his family was supposed to send that. I
19 did not get it that week. I think I met with him one other
20 time right after to ask him what's going on. At that point I
21 was informed that his family was debating who or what to hire,
22 whether me or somebody else, and at that point I felt it
23 probably made sense for me to file a motion to be relieved. At
24 that point I reached out to the government and told them --

25 THE COURT: Sorry. At this point had you had any

Jlmljonc

1 entreaty on behalf of Mr. Jones? Had anyone from Mr. Jones
2 reached out to you at this point?

3 MR. LEEMON: No.

4 THE COURT: All right. So in other words, at the time
5 you're proposing to move to be relieved, you would have been
6 absent from the case; there had been no suggestion to you that
7 Mr. Jones might be interested in your services.

8 MR. LEEMON: Well, and then in between that time and
9 me actually filing the motion, I received a call from one of
10 Mr. Jones's family asking me if I could come into the case. At
11 that point I reached out to the government and told the
12 government that I had this inquiry and I was waiting to see
13 what happened with Mr. Jordan, I was hoping Mr. Jordan was
14 going to hire new counsel in between and it would have been an
15 easy move, new counsel comes in, I get out, and then I could
16 see what happens with the Joneses. I didn't know what was
17 going to happen. At that point I didn't hear anything from the
18 Jones family until after the new year.

19 THE COURT: So you don't know whether or not the Jones
20 family is interested in your representation.

21 MR. LEEMON: At that point.

22 THE COURT: He's continued to be represented by
23 Ms. Cardi and Ms. Ferrone.

24 MR. LEEMON: Correct.

25 THE COURT: And what's going on, though, with respect

Jlmljonc

1 to the Jordan representation?

2 MR. LEEMON: At that point I still had not filed my
3 motion to be relieved. I waited to see if new counsel was
4 hired. I then received an email from the government in mid to
5 late December saying, make a decision, we need to figure out
6 what's going on. At that point I filed the motion to be
7 relieved.

8 THE COURT: And Mr. Roth had briefly represented
9 Mr. Jordan just for the purposes of the initial conference, but
10 you have appeared at this point soon thereafter for Mr. Jordan.

11 MR. LEEMON: Correct.

12 THE COURT: So Mr. Roth is out at that point.

13 MR. LEEMON: He's out. I filed the motion to be
14 relieved. And after the reappointment to Roth -- because
15 Mr. Jordan at that time had not figured out what he was doing
16 and no one had entered an appearance on his behalf. So I told
17 him, Mr. Roth had already been appointed; if there was going to
18 be a lapse, let him represent him during that lapse.

19 THE COURT: And I grant that motion.

20 MR. LEEMON: Correct.

21 THE COURT: And so just give me the brackets of your
22 representation dates of Mr. Jordan. What date to what date?

23 MR. LEEMON: Technically it was -- the initial court
24 appearance was November 26, and I believe sometime in mid to
25 late November, or December, is when I moved to be relieved. I

Jlmljonc

1 don't have the exact date.

2 THE COURT: So approximately a month.

3 MR. LEEMON: Approximately a month.

4 THE COURT: And how many times during that month,
5 first of all, did you meet in person with your client?

6 MR. LEEMON: I think three.

7 THE COURT: Tell me about those.

8 MR. LEEMON: First one was to discuss generally what's
9 going on.

10 THE COURT: That's at the MCC.

11 MR. LEEMON: At the MCC. All the meetings were at the
12 MCC.

13 THE COURT: But that's before the initial conference.

14 MR. LEEMON: That's before. I met with him then
15 shortly after, worked out the details, explained what happened.

16 THE COURT: Too blurry. You need to be --

17 MR. LEEMON: Sorry. Shortly after the status
18 conference on the 26th, I would guess sometime that week.

19 THE COURT: When you say, we met about the details and
20 what happened, you need to be --

21 MR. LEEMON: I explained what happened at the status
22 conference and I told him, we need to see the discovery, once
23 we have the discovery, we'll be able to have substantive talks
24 about the case against you.

25 THE COURT: And what's the third meeting?

Jlmljonc

1 MR. LEEMON: The third meeting was, I haven't heard
2 back from the family what's going on.

3 THE COURT: That's also in person?

4 MR. LEEMON: In person.

5 THE COURT: Other than the in-person meetings, did you
6 have any electronic communications or phone communications with
7 Mr. Jordan?

8 MR. LEEMON: I do not believe so, no. I was not on
9 his email list.

10 THE COURT: All right. In any of those three meetings
11 did Mr. Jordan say anything to you -- and I don't want the
12 content, but did Mr. Jordan say anything to you about the facts
13 of this case?

14 MR. LEEMON: Nothing substantive; just general
15 conversation about the case.

16 THE COURT: Did he say anything to you about
17 Mr. Jones?

18 MR. LEEMON: I told him that the Jones family had
19 reached out to me at one point.

20 THE COURT: I'm actually more interested in the facts
21 of the case. Did he say anything to you about --

22 MR. LEEMON: No.

23 THE COURT: -- who Mr. Jones was or any relationship
24 he had with Mr. Jones?

25 MR. LEEMON: Nothing specific, no.

Jlmljone

1 THE COURT: What about anything in general?

2 MR. LEEMON: Just he's part of the case against us.
3 Just talking about --

4 THE COURT: He's part of the case against us?

5 MR. LEEMON: I'm sorry. We did have one discussion,
6 just asking what everyone's role, who's been indicted, how he
7 knew them.

8 THE COURT: Okay. So you asked him how he knew
9 Mr. Jones?

10 MR. LEEMON: Correct.

11 THE COURT: And without telling me his answer, he
12 answered that question to you?

13 MR. LEEMON: He did.

14 THE COURT: At what length did his answer go?

15 MR. LEEMON: General.

16 THE COURT: Less than ten words?

17 MR. LEEMON: Yes.

18 THE COURT: Other than that, did Mr. Jones's name, in
19 your memory, come up at all in your communications with
20 Mr. Jordan?

21 MR. LEEMON: No.

22 THE COURT: Did you review any discovery that was
23 particular to Mr. Jordan?

24 MR. LEEMON: Absolutely not, and I have provided
25 Mr. Einhorn with the DVDs that were turned over. I never even

Jlmljonc

1 downloaded them.

2 THE COURT: Okay.

3 MR. EINHORN: We'll acknowledge receipt, your Honor.
4 We did receive them.

5 THE COURT: All right. Mr. Leemon, anything else
6 factual to proffer to me?

7 MR. LEEMON: I don't think there's anything else.

8 THE COURT: And you of course have not commenced your
9 representation of Mr. Jones because you haven't been --

10 MR. LEEMON: Officially appointed.

11 THE COURT: -- officially appointed, and you've held
12 off reviewing Jones's discovery or counseling Mr. Jones or his
13 family pending your appointment, is that correct?

14 MR. LEEMON: I have not offered anything of substance.
15 I had a couple of meetings with him. We did not discuss
16 anything, except for the fact we were going to appear here,
17 your Honor.

18 THE COURT: So the only discussions you've had with
19 him have involved the conflict issue, correct?

20 MR. LEEMON: Correct, and told him that initially,
21 before you issued that order, I had an appointment with the
22 government to go over the discovery, and we stopped that
23 pending the resolution of the --

24 THE COURT: For future reference, I shouldn't have had
25 to issue that order. If there's a *Curcio* issue, you need to

Jlmljonc

1 stop work. You need to not start work pending the appointment.
2 Otherwise there's a risk of soiling the nest for everybody if a
3 conflicted lawyer is rooting around doing stuff without court
4 approval. So for future reference, in federal court, these
5 niceties really matter. So I'm glad you didn't do any work,
6 but I shouldn't have had to tell you that, okay?

7 MR. LEEMON: All right.

8 THE COURT: So with that, let's go back then to you,
9 Ms. Ferrone. Does Mr. Leemon's account of the facts align with
10 what your understanding had been coming into this hearing?

11 MS. FERRONE: Yes, that's correct, your Honor. I
12 think that after your Honor issued the order on January 11th of
13 2019, Ms. Cardi visited in person at the MCC with Mr. Jones on
14 the following day, January 12th, the Saturday, where they
15 discussed the potential for conflict, Mr. Leemon's brief
16 representation of Mr. Jordan, and Mr. Jones indicated that to
17 the extent there was a conflict, he was willing to waive it and
18 go forward with Mr. Leemon.

19 THE COURT: Okay. Were you present for that meeting?

20 MS. FERRONE: I was not, your Honor.

21 THE COURT: Have you had any meetings with your
22 client, Mr. Jones, about the *Curcio* issue?

23 MS. FERRONE: I have not, your Honor.

24 THE COURT: In what detail did Ms. Cardi recount to
25 you -- I understand she's unavailable, and I authorized your

Jlmljone

1 standing in for her, but I want to make sure that you're in a
2 position to proffer to me about Ms. Cardi's meetings with your
3 client.

4 MS. FERRONE: Other than that one meeting on
5 January 12th, which she provided the details of to me, in broad
6 strokes, that's the extent of which I can inform the Court.

7 THE COURT: Did she convey to you that she felt that
8 Mr. Jones understood the nature of the potential conflict?

9 MS. FERRONE: Yes, she did.

10 THE COURT: Did she convey to you that Mr. Jones
11 understood that he had a right to decline to agree to proceed
12 with counsel who harbored a potential conflict?

13 MS. FERRONE: Yes.

14 THE COURT: Did she feel that Mr. Jones got it, that
15 he understood the nature of the conflict and the right that he
16 had not to proceed with anything other than a conflict-free
17 counsel?

18 MS. FERRONE: Yes.

19 THE COURT: All right. And Ms. Cardi is obviously
20 well known to me as a very respected member of the CJA panel.
21 Her word counts a lot. She was unequivocal in so representing
22 all that to you?

23 MS. FERRONE: Yes, very much so, your Honor.

24 THE COURT: All right. Very good. Let's turn then to
25 Mr. Einhorn, as to your conversations with Mr. Jordan. Before

Jlmljnc

1 I ask you about that, does Mr. Leemon's account of the facts
2 align with your understanding about what his representation had
3 been of what is now your client, Mr. Jordan?

4 MR. EINHORN: Yes, your Honor. It aligns with my
5 understanding of the situation that occurred.

6 THE COURT: And how do you come in for Mr. Roth? In
7 other words, as I understand it, Mr. Roth is there at the
8 initial conference, Mr. Leemon takes over for a month or so,
9 Mr. Leemon withdraws, I appointed Mr. Roth. How did you get
10 into this situation?

11 MR. EINHORN: I think I can make it somewhat simple.
12 We were initially contacted about Mr. Jordan's arrest sometime
13 in -- I believe it was the beginning of December, and spoke
14 with the family about potentially coming into the case. And it
15 took the family some time to be able to retain us. We had met
16 with Mr. Jordan twice at that time but were not coming into the
17 case until they were able to retain us. We didn't actually
18 hear back from them for some time, and then were not firmly
19 retained by them until just last week, at which point I went to
20 see Mr. Jordan and we discussed the *Curcio* issue and any
21 potential conflict that may exist.

22 THE COURT: All right. So you were retained last
23 week, substituting Mr. Roth.

24 MR. EINHORN: That's correct.

25 THE COURT: The lawyer who conferred with Mr. Jordan,

Jlmljonc

1 the independent lawyer with respect to the *Curcio* issue, was
2 Mr. Roth or you or both?

3 MR. EINHORN: It was me, your Honor, but I believe
4 Mr. Roth also counseled Mr. Jordan, and we discussed the
5 situation and his understanding from what Mr. Jordan wants to
6 do and what occurred were aligned.

7 THE COURT: So let's talk about your conversations
8 with Mr. Jordan. To begin with, what I think you just
9 indicated is that what Mr. Leemon described aligns with what
10 you understood the facts to be at the time you met with your
11 client?

12 MR. EINHORN: That's correct, your Honor.

13 THE COURT: How much time did you spend with
14 Mr. Jordan discussing the *Curcio* situation and his rights?

15 MR. EINHORN: I would say approximately one hour.

16 THE COURT: And when was that?

17 MR. EINHORN: This past Thursday.

18 THE COURT: Okay. And tell me more about that
19 conversation.

20 MR. EINHORN: We discussed any potential conflict of
21 interest that may exist with regard to Mr. Leemon's previous
22 representation of Mr. Jordan, we discussed the contents of
23 their meetings, the number of meetings, the length of their
24 meetings, and what, if any, details were discussed concerning
25 Mr. Jones or anybody else.

Jlmljonc

1 THE COURT: Were you left with the same understanding
2 that Mr. Leemon conveyed, that essentially there was nothing of
3 substance that Mr. Jordan conveyed to Mr. Leemon either
4 generally about the case or specifically about Mr. Jones?

5 MR. EINHORN: That's correct, your Honor. That's my
6 understanding as well.

7 THE COURT: Mr. Leemon represented that he recalls a
8 very short back-and-forth along the lines of who's Mr. Jones
9 and Mr. Jordan gave an answer that, in response to my question,
10 Mr. Leemon feels is unlikely to be more than ten words. Is
11 that in line with the understanding you took away from your
12 client?

13 MR. EINHORN: That's my takeaway as well, your Honor.

14 THE COURT: All right. And in your view, did
15 Mr. Jordan understand that he has a right to conflict-free
16 counsel, he can insist on Mr. Leemon not taking over the Jones
17 representation?

18 MR. EINHORN: He understands that, and he indicated to
19 me that he would waive for these purposes today.

20 THE COURT: All right. And you're confident he
21 understood his rights.

22 MR. EINHORN: Yes, your Honor.

23 THE COURT: All right. Government, before I take up
24 questions going one by one with the two defendants, is there
25 any additional background, in the interest of protecting the

Jlmljonc

1 record here, making sure that we have a satisfactory *Curcio*
2 examination, any of the background you want me to try to elicit
3 about the facts?

4 MR. LONGYEAR: No, your Honor. But to clarify just
5 briefly about Mr. Roth's involvement --

6 THE COURT: Right.

7 MR. LONGYEAR: -- on November 19th was the initial
8 presentment, and at that point Judge Pitman, upon reviewing the
9 financial affidavit from Mr. Jordan, determined that he was not
10 eligible for CJA and therefore appointed Mr. Roth for
11 presentment only.

12 THE COURT: I see. So he was going to have to get
13 substituted.

14 MR. LONGYEAR: That's correct. So that's the 19th.

15 I think on the 25th then Mr. Leemon comes in and is in
16 for the 26th, the conference was on November 26th, and then I
17 believe your Honor, I want to say it was around December 23rd,
18 somewhere around then is when your Honor signed, so ordered
19 Mr. Leemon's letter requesting that he be relieved, and at that
20 point was when Mr. Roth was then appointed for Mr. Jordan. So
21 I don't want to speak to Mr. Roth because he and I haven't had
22 substantive conversations about what was discussed, but I just
23 want to make clear that Mr. Roth technically wasn't
24 representing Mr. Jordan. He was only appointed at that initial
25 presentment.

Jlmljone

1 THE COURT: Understood. All right. Thank you. Very
2 helpful.

3 Let me just come back to you, Mr. Einhorn. I covered
4 your discussions with Mr. Jordan. Did Mr. Roth make any
5 representations to you about his discussions with Mr. Jordan
6 about the *Curcio* issue?

7 MR. EINHORN: He indicated to me that they discussed
8 the issue and they had gone back and forth on it, and his
9 takeaway was similar to mine and similar to Mr. Leemon's as
10 well.

11 THE COURT: All right. Okay. Very good.

12 If nobody has any additional questions, I'm going to
13 proceed to question first Mr. Jones. But Mr. Jordan, I will
14 ask you to play close attention because some of the questions
15 that I ask Mr. Jones will be similar, so it will help you get
16 up to speed.

17 Mr. Smallman, will you kindly swear Mr. Jones.

18 (Defendant Jones sworn)

19 THE COURT: All right. Mr. Jones, how old are you?

20 DEFENDANT JONES: Thirty-eight.

21 THE COURT: You can sit down. It's fine with me.
22 Just speak into the mic so everyone can hear you.

23 What education have you received?

24 DEFENDANT JONES: Twelfth grade.

25 THE COURT: Where was that?

Jlmljone

1 DEFENDANT JONES: John Jay High School.

2 THE COURT: All right. And are you currently under a
3 doctor's care or taking any medication?

4 DEFENDANT JONES: No, sir.

5 THE COURT: No?

6 DEFENDANT JONES: No, sir.

7 THE COURT: All right. Very good.

8 In the past 24 hours have you taken any drugs,
9 alcohol, or anything that could impair your ability to
10 understand?

11 DEFENDANT JONES: No, sir.

12 THE COURT: Is there anything today that's interfering
13 with your ability to understand what's happening?

14 DEFENDANT JONES: No, sir.

15 THE COURT: Your mind is clear?

16 DEFENDANT JONES: Yes.

17 THE COURT: Okay. And Mr. Leemon, is it your view
18 that Mr. Jones is of a clear mind today?

19 MR. LEEMON: Absolutely. I met with him before court
20 and he's clear.

21 THE COURT: And Ms. Ferrone, same?

22 MS. FERRONE: Yes, your Honor.

23 THE COURT: All right. Mr. Jones, to the extent you
24 had conversations with Mr. Leemon, are you satisfied with his
25 work and services so far?

Jlmljonc

1 DEFENDANT JONES: Yes, sir.

2 THE COURT: Has Mr. Leemon in fact informed you that
3 at one point he represented your co-defendant Mr. Jordan?

4 DEFENDANT JONES: Yes, sir.

5 THE COURT: Do you understand that the fact that
6 Mr. Leemon at one point represented Mr. Jordan and had
7 conversations of some sort with him that are likely covered by
8 attorney-client privilege, that those could lead Mr. Leemon in
9 some circumstance to have divided loyalties between you and
10 Mr. Jordan?

11 DEFENDANT JONES: Yes, sir.

12 THE COURT: And let me give you some examples of ways,
13 at least in theory, that Mr. Leemon's privileged conversations
14 with Mr. Jordan could adversely affect his representation of
15 you. And let me make something clear.

16 Mr. Leemon, please don't pass that notepad. You're
17 not even counsel yet. If you're passing notes, why don't you
18 sit in back. You're not his counsel yet, and I can't tell you
19 how offensive it is that I'm in the middle of a *Curcio* hearing
20 and the lawyer who's subject to the conflict is passing notes
21 to the client. Go sit in the back. I'm sorry. But, you know,
22 this is federal court.

23 Ms. Ferrone, why don't you go sit next to your client.

24 MS. FERRONE: Sure.

25 THE COURT: Look, Mr. Jones, I'm not in any way

Jlmljonc

1 representing to you that in point of fact any of these conflict
2 issues could come home to roost. My job is just to make sure
3 you're aware of the possibilities. I've certainly heard what
4 Mr. Leemon represented, and if it's as described, it sounds
5 very likely like a nonissue, but it's possible there's more
6 there than any of us remember, that he remembers, and so I need
7 to ask you these questions. Don't infer from my questions that
8 I'm making a judgment that there is a problem here. I'm simply
9 being neutral in describing a few possibilities. Do you
10 understand that?

11 DEFENDANT JONES: Yes, sir.

12 THE COURT: All right. So Mr. Jones, these are ways
13 in which Mr. Leemon's privileged conversations with Mr. Jordan
14 could potentially adversely affect his representation of you.

15 First of all, are you aware that Mr. Leemon could
16 possibly have information from Mr. Jordan that would be helpful
17 in defending you but that he would be absolutely prohibited
18 from using it to defend you because of the attorney-client
19 privilege?

20 DEFENDANT JONES: Yes, sir.

21 THE COURT: Similarly, do you understand that were
22 this case to proceed to trial, and if Mr. Jordan were to
23 testify, Mr. Leemon might have information to cross-examine
24 Mr. Jordan but he would be prohibited from using it because
25 it's protected by the attorney-client privilege? Do you

Jlmljonc

1 understand that?

2 DEFENDANT JONES: Yes, sir.

3 THE COURT: All right. I need to make sure you
4 understand in your own words what the potential conflict is
5 here. Can you put it in your own words to me?

6 DEFENDANT JONES: Maybe -- like maybe when they spoke,
7 that whatever, whatever information that he -- that he got from
8 Kifano Jones, that he can't use to help me down the line.

9 THE COURT: Okay. All right. And do you understand
10 that apart from what you've just described, apart from the two
11 situations that I've described, one danger is that we may not
12 be able to foresee all the possible conflicts here; in other
13 words, there's a possibility that there may be some other
14 conflict that none of us can quite imagine right now that
15 arises because Mr. Leemon had privileged conversations with
16 Mr. Jordan and they might in some way limit his ability to
17 represent you? Do you understand there's a possibility that
18 there's something else out there that none of us have spotted?

19 DEFENDANT JONES: Yes, sir.

20 THE COURT: Okay. And do you understand that in every
21 criminal case, including yours, a defendant is entitled to
22 assistance of counsel whose loyalty to him is undivided, who's
23 not subject to any factor that might in any way intrude upon an
24 attorney's loyalty to his interests?

25 DEFENDANT JONES: Yes, sir.

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1 THE COURT: And in other words, do you understand that
2 you are entitled to an attorney who has your interests alone,
3 only your interests in mind and not the interests of anyone
4 else, not the interests of any other client?

5 DEFENDANT JONES: Yes, I do.

6 THE COURT: That's your right; you understand that.

7 DEFENDANT JONES: Yes, sir.

8 THE COURT: Has anyone given you any inducement or any
9 promise or any threat with respect to your choice of counsel?

10 DEFENDANT JONES: No, sir.

11 THE COURT: Have you consulted with any attorneys
12 other than Mr. Leemon, such as Ms. Cardi, about the issues
13 presented by this potential conflict of interest?

14 DEFENDANT JONES: You say any other lawyer?

15 THE COURT: Yes. Like did you speak with Ms. Cardi?

16 DEFENDANT JONES: Yes, sir.

17 THE COURT: How long did you spend with Ms. Cardi on
18 this subject?

19 DEFENDANT JONES: About 30, 40 minutes.

20 THE COURT: Okay. And do you feel, coming away from
21 that conversation, you understood the potential conflict of
22 interest here?

23 DEFENDANT JONES: Yes, sir.

24 THE COURT: All right. And do you understand that you
25 had a right to confer with Ms. Cardi about that and if you want

Jlmljone

1 more time, I'll give you an opportunity to speak again with her
2 or with Ms. Ferrone, if there's any aspects of the information
3 that I've conveyed to you today that you want to discuss with
4 an attorney who is free of a conflict? Do you understand that?

5 DEFENDANT JONES: Yes, sir.

6 THE COURT: All right. I'm prepared, if you want, to
7 adjourn the rest of this proceeding as to you if you'd like
8 more time to consult with an attorney about the potential
9 conflict of interests that I've described, and if it were to
10 turn out that you couldn't afford a lawyer to consult with, I
11 would be glad to appoint somebody. I think realistically, I
12 would ask Ms. Cardi to continue on, and Ms. Ferrone, because
13 they're as able as anyone to handle this. But the point is
14 that I would give you more time to speak with them if you'd
15 like. Would you prefer to adjourn so you can give more time or
16 thought to this matter, or are you prepared to decide now?

17 DEFENDANT JONES: I'm prepared to decide now.

18 THE COURT: All right. After considering everything
19 I've said to you about the ways in which Mr. Leemon's prior
20 representation of Mr. Jordan may adversely affect your defense,
21 do you believe that it's in your best interests to continue
22 with him as your attorney?

23 DEFENDANT JONES: Yes, sir.

24 THE COURT: All right. And more precisely, do you
25 want me to appoint him, to authorize his substitution as your

Jlmljonc

1 attorney? I don't need to appoint him. He's a retained
2 counsel. But I need to clear his representation as against the
3 potential conflict. It is your wish that I do so.

4 DEFENDANT JONES: Yes, sir.

5 THE COURT: All right. And do you understand that by
6 choosing to have Mr. Leemon as your attorney, you're waiving
7 your right to be represented solely by an attorney who has no
8 conflict of interest?

9 DEFENDANT JONES: Yes, sir.

10 THE COURT: All right. And you're knowingly and
11 voluntarily waiving your right to conflict-free representation?

12 DEFENDANT JONES: Yes, sir.

13 THE COURT: And do you agree to waive any
14 postconviction argument -- meaning if you're convicted at a
15 trial in this case, do you agree to waive any postconviction
16 argument, on appeal or otherwise, that by virtue of
17 Mr. Leemon's prior representation of Mr. Jordan and his
18 representation now of you, you were denied effective assistance
19 of counsel by Mr. Leemon? You agree to forgo that argument?

20 DEFENDANT JONES: Yes, sir.

21 THE COURT: All right. Is there anything that I've
22 said that you wish to have explained further?

23 DEFENDANT JONES: No, sir.

24 THE COURT: All right. I have listened closely to
25 Mr. Jones, and I am firmly persuaded that he understands his

Jlmljonc

1 right to conflict-free counsel and has knowingly and
2 voluntarily waived it.

3 We now need to take up the same issues with
4 Mr. Jordan, but I certainly am persuaded that there is a
5 satisfactory waiver here as it relates to Mr. Jones.

6 I should ask the government whether you have any
7 different view.

8 MR. LONGYEAR: No, your Honor.

9 THE COURT: All right. And counsel, I take it you're
10 in agreement as well.

11 MS. FERRONE: Yes, your Honor.

12 THE COURT: Okay. Then let's turn to Mr. Jordan.

13 Mr. Smallman, would you kindly swear Mr. Jordan.

14 (Defendant Jordan sworn)

15 THE COURT: All right. You may be seated.

16 Mr. Jordan, how old are you?

17 DEFENDANT JORDAN: I'm 36 years old, your Honor.

18 THE COURT: And what education have you received?

19 DEFENDANT JORDAN: High school education.

20 THE COURT: Where was that?

21 DEFENDANT JORDAN: George Westinghouse High School.

22 THE COURT: Where is that?

23 DEFENDANT JORDAN: In Brooklyn.

24 THE COURT: Okay. And are you currently taking any
25 medication or under a doctor's care?

Jlmljonc

1 DEFENDANT JORDAN: No, your Honor.

2 THE COURT: In the past 24 hours have you taken any
3 alcohol, had any alcohol or drugs or taken anything that could
4 impair your ability to understand or make yourself heard?

5 DEFENDANT JORDAN: No, your Honor.

6 THE COURT: Is your mind clear today?

7 DEFENDANT JORDAN: Yes, sir, your Honor.

8 THE COURT: Anything interfering with your ability to
9 understand what's happening here today?

10 DEFENDANT JORDAN: No, your Honor.

11 THE COURT: And Mr. Einhorn, are you satisfied that
12 your client is of a clear mind today?

13 MR. EINHORN: I am, your Honor.

14 THE COURT: All right. Mr. Jordan, do you understand
15 that the fact that Mr. Leemon once represented you and likely
16 had conversations with you that are covered by the
17 attorney-client privilege, that all that could lead to divided
18 loyalty by Mr. Leemon as between you and Mr. Jones if he takes
19 on the representation of Mr. Jones?

20 DEFENDANT JORDAN: Yes, your Honor.

21 THE COURT: Do you understand that were the case to
22 proceed to trial, and you testified at trial, Mr. Leemon could
23 potentially cross-examine you and, in the process, in some way
24 potentially exploit confidences that he learned from you during
25 his representation of you?

Jlmljonc

1 DEFENDANT JORDAN: Yes, your Honor.

2 THE COURT: And tell me in your own words what your
3 understanding is of the potential conflict of interest that
4 would occur if Mr. Leemon is allowed now to represent
5 Mr. Jones.

6 DEFENDANT JORDAN: If we did have any conversations
7 about the case prior to him representing Mr. Jones, that it
8 could affect us at trial, somewhere down the line.

9 THE COURT: In what way?

10 DEFENDANT JORDAN: Either in a negative or positive
11 way.

12 THE COURT: Right. But in other words, just
13 concretely, just explain to me how that could hurt you. Like
14 in what potential way? How could it hurt you?

15 DEFENDANT JORDAN: If me and him spoke in any way, he
16 might be able to bring it up in open court, cross-examine me,
17 whatever.

18 THE COURT: Okay. Same questions I asked Mr. Jones.
19 Do you understand in every criminal case, including yours, the
20 defendant is entitled to assistance of counsel whose loyalty to
21 him is undivided, who is not subject to any factor that might
22 in any way intrude upon an attorney's loyalty to his interests?

23 DEFENDANT JORDAN: Yes, I understand.

24 THE COURT: You understand that you're entitled to
25 have an attorney who has only your interests in mind and not

Jlmljonc

1 the interests of any other client.

2 DEFENDANT JORDAN: Yes, your Honor.

3 THE COURT: All right. And have you received any
4 inducement, promise, or threat with regard to your decision
5 whether or not to waive the right to conflict-free counsel so
6 as to help allow Mr. Leemon to represent Mr. Jones?

7 DEFENDANT JORDAN: No, your Honor.

8 THE COURT: All right. Have you consulted with
9 independent counsel, somebody other than Mr. Leemon, about the
10 dangers to you presented by the potential conflict of interest?

11 DEFENDANT JORDAN: Yes, I have, your Honor.

12 THE COURT: Who have you consulted with?

13 DEFENDANT JORDAN: Mr. Einhorn and Mr. Roth.

14 THE COURT: Do you feel you spent enough time with
15 them to understand your rights here?

16 DEFENDANT JORDAN: Yes, your Honor.

17 THE COURT: About how much time did you spend with
18 each of them?

19 DEFENDANT JORDAN: Combined, maybe over -- about an
20 hour and 40 minutes combined.

21 THE COURT: Okay. And do you understand that you have
22 a right to do just that, you have a right to consult with
23 attorneys who don't have any conflict of interest, and that
24 I'll give you an opportunity to continue those conversations if
25 there's anything that you want to follow up with? Do you

Jlmljonc

1 understand that?

2 DEFENDANT JORDAN: Yes, I do, your Honor.

3 THE COURT: All right. And I'm prepared to adjourn
4 the remainder of this proceeding so that you can continue your
5 conversation with Mr. Einhorn, or if you wanted to go back to
6 see Mr. Roth, I'm happy for you to do that if you'd like to.
7 Would you prefer that I adjourn until you can give more thought
8 to this matter, or are you prepared to decide today?

9 DEFENDANT JORDAN: I'm prepared to decide today, your
10 Honor.

11 THE COURT: All right. And are you knowingly and
12 voluntarily waiving your right to conflict-free representation?

13 DEFENDANT JORDAN: Yes, I am, your Honor.

14 THE COURT: And do you agree to waive any
15 postconviction argument, on appeal or otherwise, that by virtue
16 of Mr. Leemon's earlier representation of you and his upcoming
17 representation of Mr. Jones, that you were denied effective
18 assistance of counsel?

19 DEFENDANT JORDAN: Yes, I do, your Honor.

20 THE COURT: All right. Is there anything that I have
21 said that you'd like to have explained further?

22 DEFENDANT JORDAN: No, sir.

23 THE COURT: All right. Government counsel, do you
24 disagree that Mr. Jordan has given a knowing and voluntary
25 waiver of his right to conflict-free counsel?

Jlmljone

1 MR. LONGYEAR: No, we do not disagree.

2 THE COURT: Defense counsel, any disagreement?

3 MR. EINHORN: No disagreement, your Honor.

4 THE COURT: As with Mr. Jones, I find that Mr. Jordan
5 has knowingly and voluntarily waived his right to conflict-free
6 counsel. So with that, I will authorize Mr. Leemon's
7 representation, effective immediately, of Mr. Jones. I find
8 that both defendants have knowingly and voluntarily waived
9 their right to conflict-free counsel.

10 Ms. Ferrone, I take it that means that you and
11 Ms. Cardi are, effectively immediately, relieved.

12 MS. FERRONE: Yes, your Honor. We'll not be at the
13 2 p.m. conference.

14 THE COURT: No. I believe it's 2:30.

15 MS. FERRONE: 2:30, right.

16 THE COURT: Yes. And will you please make sure, on
17 behalf of yourself and Ms. Cardi, to promptly effect a full
18 knowledge transfer to Mr. Leemon. You've been at this case now
19 since mid/late November. To the extent you have discovery, to
20 the extent you have interviews, to the extent you have work
21 product, please promptly make it available to Mr. Leemon so
22 that he can hit the ground running.

23 MS. FERRONE: Absolutely, your Honor.

24 THE COURT: All right. And government, would you
25 please make sure that Mr. Leemon has whatever discovery letters

Jlmljonc

1 or other correspondence you've issued so that he is in a
2 position to determine that he is in fact in possession of all
3 correspondence and Rule 16 discovery from the government.

4 MR. LONGYEAR: Yes, your Honor, and one point on that.
5 There is a protective order in this case. Mr. Leemon had
6 signed it on behalf of Mr. Jordan. Mr. Einhorn and
7 Mr. Lichtman are now in for Mr. Jordan. So I guess my question
8 for your Honor is, how would you like us to address that
9 protective order? Is it enough that they're aware of it and --

10 THE COURT: I think they ought to sign it, but just so
11 Mr. Leemon may now get in on the case, Mr. Leemon may now come
12 forward.

13 Mr. Leemon, do you understand that the protective
14 order that you once issued as to Mr. Jordan equally applies to
15 you in your representation of Mr. Jones?

16 MR. LEEMON: I do.

17 THE COURT: I'll ask you, when the government gets you
18 the new version, to sign it, but so that you can get out of the
19 gate quickly without delay, do you understand that per this
20 conversation, you're bound by those same terms in your
21 representation of Mr. Jones?

22 MR. LEEMON: I do.

23 THE COURT: All right. Very good.

24 All right. Before we break, Mr. Leemon, am I correct
25 that you disrupted your travel plans to come here today?

Jlmljonc

1 MR. LEEMON: I did.

2 THE COURT: Where were you going?

3 MR. LEEMON: I was supposed to be in Jamaica, your
4 Honor.

5 THE COURT: All right. I want to just give a shoutout
6 to you, because while I was a little tart with you a moment ago
7 for passing notes with your future client during a colloquy;
8 it's also the case that you did something very noble, which is
9 to disrupt your own travel plans to get here so that you could
10 start your representation earlier. I have great respect for
11 that. I hope it didn't inconvenience you and your family too
12 much, but I'm grateful for your dedication to Mr. Jones that
13 you did that.

14 Mr. Jones, you have a dedicated lawyer.

15 Yes.

16 MR. EINHORN: Judge, just one more thing before we
17 break, before the 2:30. I was only recently informed of this,
18 but there actually is another *Curcio* issue that's not been
19 explored as of yet, and that is that Mr. Hernandez, who has
20 Mr. Lazzaro as his attorney, previously represented my client,
21 actually at trial once and I believe in two other cases as
22 well. I wanted to get that before the Court.

23 THE COURT: That was at a trial?

24 MR. EINHORN: At a trial. He was his lawyer at a
25 trial, I believe in Brooklyn?

Jlmljonc

1 DEFENDANT JORDAN: Yes, sir.

2 MR. EINHORN: I was only briefly made aware of it. I
3 wanted to get it before the Court as soon as possible.

4 THE COURT: When did you become aware of this?

5 MR. EINHORN: Just on Thursday, Judge, when I met with
6 Mr. Jordan.

7 THE COURT: Is there some reason why I'm learning of
8 this now as opposed to later on Thursday?

9 MR. EINHORN: Your Honor, I left the state after I met
10 with Mr. Jordan.

11 THE COURT: No, but the internet didn't leave you. Is
12 there some reason you didn't tell the government or find a way
13 to alert my chambers? For heaven's sake, that's five days ago.
14 It would have been better for all of us to know it.

15 MR. EINHORN: I apologize to the Court, your Honor. I
16 did want the opportunity to discuss the matter again with
17 Mr. Jordan to find out exactly the details. He couldn't
18 remember everything. We did sit here, we talked about it
19 before your Honor came out again, but there is certainly an
20 issue.

21 THE COURT: Mr. Hernandez represented Mr. Jordan at
22 some point.

23 MR. EINHORN: No, no, no, no, no. Mr. Lazzaro
24 represented.

25 THE COURT: I'm sorry. Mr. Lazzaro. Right.

Jlmljonc

1 Mr. Lazzaro, who is the current lawyer for --

2 MR. EINHORN: Mr. Hernandez, Daniel Hernandez.

3 THE COURT: -- once represented --

4 MR. EINHORN: My client.

5 THE COURT: In what sort of matter?

6 MR. EINHORN: He was his attorney in I believe three
7 criminal cases.

8 DEFENDANT JORDAN: Yes, sir.

9 MR. EINHORN: And one was taken to trial.

10 THE COURT: And what did they relate to? What were
11 the facts? What were the charges?

12 MR. EINHORN: If I can have just a brief second, your
13 Honor.

14 THE COURT: Yes, take a moment.

15 (Mr. Einhorn conferring with Defendant Jordan)

16 MR. EINHORN: Hence why we need to discuss it again,
17 your Honor. So there was a reckless endangerment trial, and
18 Mr. Jordan was acquitted at that trial, and he was represented
19 by Mr. Lazzaro. He said there were two other cases as well.
20 He could not remember the details of those cases. I was
21 hopeful that by now we would have a little bit more information
22 so we could try and pull the records and at least get
23 something.

24 THE COURT: Have you tried to pull the records?

25 MR. EINHORN: We contacted the court for the

Jlmljonc

1 information but we didn't get it yet. It's very difficult for
2 defense attorneys actually to get rap sheets for clients and
3 work backwards. We get everything from the government usually.

4 THE COURT: When did you first tell the government
5 about this potential conflict?

6 MR. EINHORN: Only now, Judge.

7 THE COURT: You mean only in front of me.

8 MR. EINHORN: Only in front of you.

9 Your Honor, and just in realtime, I'm only hearing
10 about something now as well, and that's Mr. Lazzaro represented
11 another defendant in this case, Faheem Walter.

12 THE COURT: Currently represents him on the state?

13 MR. EINHORN: He's presently representing him on a
14 state case, your Honor.

15 THE COURT: I'm sorry. I'm confused. Mr. Lazzaro
16 also represented who?

17 MR. EINHORN: Faheem Walter, who is a defendant in
18 this case, and, at least according to my client, is still
19 representing him on a state case.

20 THE COURT: What's that case about?

21 (Mr. Einhorn conferring with Defendant Jordan)

22 MR. EINHORN: It's an assault case, your Honor,
23 related to a shooting. I apologize. That's all the
24 information I have at this point.

25 THE COURT: All right. Look, I appreciate your

Jlmljonc

1 bringing it to my attention, but if it isn't apparent, I'm less
2 than satisfied with the speed by which the government and I are
3 being told of this. I mean, I've got a conference in this case
4 at 2:30. For heaven's sake, I mean, you knew that I was
5 scheduling the *Curcio* hearing as to the issue here to get it
6 done before that conference. You're sitting on this
7 information. I'm glad you got to go out of state, but
8 meanwhile you've messed up this 2:30 conference. We could have
9 either put over the conference or at least tried to gather
10 facts as to the *Curcio* to make sense of all this.

11 And have you spoken, for example, to Mr. Lazzaro about
12 the issue?

13 MR. EINHORN: I have not yet.

14 THE COURT: So in other words, except for talking to
15 your client and then going away for the long weekend, you've
16 done nothing.

17 MR. EINHORN: I spoke with the client, I spoke with my
18 partner as well. We discussed the matter. We were both
19 hopeful we would get more information from Mr. Jordan as to the
20 details. Doesn't sound like he remembered a lot more from then
21 to now. We were hopeful he would so that there would be more
22 we could go forward with with regard to a *Curcio* hearing, your
23 Honor.

24 THE COURT: All right. Look, I will ask you to meet
25 with the government promptly after we adjourn today to give

Jlmljonc

1 them the benefit of everything you know. Interview your client
2 as much as possible. But as I understand it, really, it's
3 Mr. Walter and Mr. Jordan who were the clients in these prior
4 Lazzaro representations.

5 MR. EINHORN: That's correct, your Honor.

6 THE COURT: And so playing this out, I think I can
7 figure it out, but articulate for me the potential conflicts
8 presented by a Lazzaro representation in the past of your
9 client, let's say.

10 (Defendant Jordan conferring with his counsel)

11 MR. EINHORN: Just generally, your Honor, for
12 instance, if my client were to testify and Mr. Lazzaro were to
13 examine my client in some way, he could use that information
14 against him. My understanding is that there was a discussion
15 potentially that revolved around this case as well; without
16 getting into any details or breaking any confidentiality, that
17 there was a discussion about that. Certainly that could be
18 used against my client as well.

19 THE COURT: In terms of an issue for
20 cross-examination.

21 MR. EINHORN: Correct.

22 THE COURT: Okay. And although I realize you're not
23 party to all this, same theory would presumably apply to
24 Mr. Walter, that there would be a concern that at trial there
25 would be some knowledge of the prior client that would inform

Jlmljone

1 cross-examination.

2 MR. EINHORN: That would be my understanding, your
3 Honor. I don't represent Mr. Walter, of course.

4 THE COURT: Yes, yes. Do you understand that any of
5 the charges on which Mr. Lazzaro represented your client are
6 connected in any way to the charges or the organization that is
7 identified in the indictment?

8 MR. EINHORN: Without revealing client confidences,
9 your Honor, I think that to be more clear, there was an inquiry
10 and a discussion with Mr. Lazzaro that would have been
11 connected after representation concluded in his final case.

12 THE COURT: I'm sorry. I don't follow what you're
13 saying.

14 MR. EINHORN: Okay. Mr. Lazzaro represented my
15 client, and then afterwards, there was a discussion concerning
16 something related to this case that occurred between my client
17 and Mr. Lazzaro. So he didn't seek to retain him for that
18 case, but he had a longstanding relationship with this attorney
19 and then he contacted this attorney and there was a discussion.

20 THE COURT: And your understanding is that the
21 discussion between your client and Mr. Lazzaro, even though it
22 wasn't in connection with a pending charge, somehow discussed
23 some of the conduct that is, let us say, alleged in the
24 indictment.

25 MR. EINHORN: I don't know that I would want to say

Jlmljonc

1 conduct because that might be too specific, but certainly the
2 organization itself, the alleged organization.

3 THE COURT: Right. Okay. Look, I will ask you to be
4 as transparent as you can with the government, consistent with
5 attorney-client privilege, so that they're in a position to
6 work through what are always a complicated set of issues, made
7 more complicated by our pending 2:30. I suppose I will need to
8 put on the record at the 2:30 conference the fact that, as if
9 out of nowhere, a *Curcio* issue came up here and that I will be
10 asking government counsel and counsel for the affected
11 defendants to promptly confer about the right way to address
12 the *Curcio*.

13 MR. EINHORN: Thank you, your Honor.

14 THE COURT: Government, anything?

15 MR. LONGYEAR: Just, Mr. Hernandez is also represented
16 by Ms. Dawn Florio, and I guess we should ask now if there are
17 any issues there as well.

18 THE COURT: That's a nice question. Is Ms. Florio, to
19 your knowledge, affiliated at the same firm as Mr. Lazzaro?

20 MR. LONGYEAR: Not to the government's knowledge, your
21 Honor, no.

22 THE COURT: Did Ms. Florio represent your client --

23 MR. EINHORN: No, your Honor.

24 THE COURT: -- Mr. Einhorn?

25 MR. EINHORN: No, your Honor.

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1 THE COURT: And let's just have it out. Ask your
2 client if Ms. Florio ever represented anyone else in this case.

3 MR. EINHORN: He seems to know a lot.

4 (Mr. Einhorn conferring with Defendant Jordan)

5 MR. EINHORN: No, your Honor.

6 THE COURT: I think that's a very smart question the
7 government has identified, because in the hands of an
8 independent lawyer such as Florio, that helps some, but the
9 representation by Mr. Lazzaro obviously presents sort of
10 cross-examination issues with respect to Mr. Jordan that I
11 understand.

12 All right. Government, you've got some thinking to do
13 as to how to sort out the swirl of issues here.

14 In any event, I'll see you all at 2:30. Thank you,
15 all.

16 One moment. Mr. Smallman, where is the 2:30?

17 THE DEPUTY CLERK: 318.

18 THE COURT: Courtroom 318, not here. All right. See
19 you at courtroom 318. Thank you.

20 THE DEPUTY CLERK: All rise.

21 o0o